



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-92-15

FACTS:

You are the Administrator of a Town (Town).^{1/} You inform us that the members of a Board (Board) are elected to that position. The Board's Clerk (Clerk) is appointed by the Board to a full-time, paid position.

QUESTION:

Does G.L. c. 268A allow a Board member to be appointed to a paid position under the direction of the Board?

ANSWER:

Yes, provided that the Board of Selectmen classifies the position of Board member as a "special municipal employee" position pursuant to G.L. c. 268A, §1(n) and provided that the appointment is approved at Town Meeting pursuant to §21A.

DISCUSSION:

Members of the Board are considered municipal employees for purposes of G.L. c. 268A. Two sections of the conflict of interest law are therefore relevant to your question.

Section 20

This section prohibits a municipal employee from having a financial interest in a municipal contract. The term contract includes any type of agreement or arrangement between two or more parties under which each undertakes certain obligations in consideration of the promises made by the other. Thus, the Commission has previously held that the term "contract" includes employment arrangements. *See EC-COI-84-91; In re Doherty, 1982 SEC 115. See Quinn v. State Ethics Commission, 401 Mass. 210 (1987).*

A Board member who is employed as the Clerk would have a financial interest in a municipal contract within the meaning of §20. Accordingly, a Board member would be prohibited from holding the position of Clerk unless one of the exemptions available in §20 applies.

If the position of Board member is designated by the selectmen as a special municipal employee position, a Board member may avail himself of the exemption found in §20(d). Upon his/her filing with the Board of a written disclosure of the Board member's financial interest in the Clerk's position as well as the approval of such an exemption by the selectmen, the Board member's financial interest in a municipal contract will be allowed.^{2/}

Section 21A

This section prohibits a municipal board from appointing any of its members to any office or position under the supervision of that board unless such appointment is first approved by Town Meeting.^{3/} Therefore, even upon compliance with the requirements of §20, the Board may not appoint one of its members to the Clerk's position unless the Town Meeting first approves the appointment.^{4/}

Date Authorized: May 14, 1992

¹You are requesting this opinion on behalf of the Board of Selectmen, who are interested in, among other things, the necessity of designating certain Town positions as special municipal employee positions.

²In the Clerk's position, the employee will not have a financial interest in the Board position because the Board members are elected and the Commission has previously determined that election to a public office does not create a contract. *EC-COI-82-26*.

³Rather than seeking Town Meeting approval, it may also be possible to add the duties of the Clerk's position to the responsibilities of one member of the Board. In other words, the Board would be structured so that one member would be required to carry out the Clerk's functions as of part his/her role. Any additional compensation received by this particular Board member would be for additional responsibilities as a Board member rather than for holding a separate municipal position, thereby avoiding any issues under §§20 and 21A. Because such a change in the structure of the Board may need to be accomplished through adoption of a by-law, or may depend on other provisions of state law, we suggest that you contact Town Counsel if you choose to restructure the Board rather than follow the procedure set forth in this opinion.

⁴Waiver of compensation in the Clerk's position would eliminate all issues under §20, but would not obviate the need for Town Meeting approval under §21A.